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Indianapolis, IN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINGSWOOD SERVICES, INC.

and

Case 25--CA--20850

KEITH SCHAFFER, an Individual

05 July 22, 1991
05 DECISION AND ORDER
By Members Devaney, Orloff, and Randalough
Upon a charge filed by Keith Schaffer on August 22, 1990, and

subsequently amended on August 28, 1990, the General Counsel of the National Labor Relations Board issued a complaint on October 31, 1990, against Kingswood Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 13, 1991, the General Counsel filed a Motion for Summary Judgment. On May 20, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in said complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated March 26, 1991, notified the Respondent that unless an answer was received by the close of business April 3, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a North Carolina corporation, operates a janitorial services company at its facilities in Houston, Texas, and Indianapolis, Indiana. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations described above, purchased and received at its Texas facilities products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Texas; derived gross revenues in excess of \$500,000; and performed services valued in excess of \$50,000 in States other than North Carolina and Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, Local 551, Service Employees International Union,

AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

About June 11 and 25, 1990, the Respondent issued unwarranted written warnings to employee Keith Schaffer. About August 17, 1990, the Respondent imposed an unwarranted 5-day disciplinary suspension and a 90-day probationary period on Schaffer. About August 27, 1990, the Respondent discharged Schaffer. The Respondent engaged in this conduct because Schaffer and a relative of Schaffer joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection; because Schaffer's relatives testified in the hearing before an administrative law judge of the Board in Cases 25--CA--20128 and 25--CA--20141;¹ and because Schaffer filed the instant charges with the Board.

By these acts and conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act.

Conclusions of Law

By issuing warnings, suspending, imposing probationary periods, and discharging Keith Schaffer, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act.

¹ 302 NLRB No. 34 (Mar. 29, 1991).

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer Keith Schaffer immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings or other benefits he may have suffered by reason of the unlawful suspension and discharge in the manner set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to rescind its imposition of an unlawful probationary period and to remove from its files any reference to the unlawful warnings, suspension, probationary period, or discharge and to notify Schaffer that this has been done and that these unlawful actions will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Kingswood Services, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing warnings, suspending, imposing probationary periods, and discharging employees because they or their relatives file unfair labor practice charges, testify in Board proceedings, or otherwise engage in union and other protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Keith Schaffer immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make him whole for any loss of earnings and other benefits suffered as a result of the unlawful suspension and discharge, in the manner set forth in the remedy section of this decision.

(c) Rescind its imposition of an unlawful probationary period.

(d) Remove from its files any reference to the unlawful warnings, suspension, probationary period, or discharge of Keith Schaffer and notify him in writing that this has been done and that these unlawful actions will not be used against him in any way.

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, wage rate and other records, work schedules, production reports and data, social security payment records, timecards, personnel records and reports, and all other records and entries necessary to determine the sums due under this order.

(f) Post at its facility in Indianapolis, Indiana, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Keith Schaffer immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make him whole for any loss of earnings and other benefits suffered as a result of the unlawful suspension and discharge, in the manner set forth in the remedy section of this decision.

(c) Rescind its imposition of an unlawful probationary period.

(d) Remove from its files any reference to the unlawful warnings, suspension, probationary period, or discharge of Keith Schaffer and notify him in writing that this has been done and that these unlawful actions will not be used against him in any way.

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Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT issue warnings, suspend, impose probationary periods, discharge, or otherwise discriminate against employees because they or their relatives file unfair labor practice charges with the Board, testify in unfair labor practice hearings, or otherwise engage in union and other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce, employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Keith Schaffer full and immediate reinstatement to his former job or, if that job no longer exists, to a substantially equal job, without prejudice to his seniority and other rights and privileges, and WE WILL make him whole, with interest, for any loss of earnings and benefits he may have suffered as a result of his unlawful suspension and discharge.

WE WILL rescind the unlawful probationary period imposed on Keith Schaffer and WE WILL remove from our files all references to our unlawful conduct against him and notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

KINGSWOOD SERVICES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 575 N. Pennsylvania Street, Room 238, Indianapolis, Indiana 46204-1577, Telephone 317--226-7413.